



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlord: **OPR-DR, MNR-DR, FFL**

Tenant: **CNR**

### Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with applications filed by both the landlord and the tenant pursuant the *Residential Tenancy Act*.

The landlord applied for:

- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55;
- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55.

The landlord and the tenant R.T. attended the hearing. R.T. advised that he is also acting as agent for the co-tenant, VC. The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

### Preliminary Issues

The tenant acknowledged receipt of the landlord's Notice of Dispute Resolution Proceedings but indicated he has macular degeneration and is unable to read it. The tenant testified that he read the material when he had better eyesight a few months ago but he can no longer read it. The landlord acknowledged receiving the tenant's Notice of Dispute Resolution Proceedings and had no issues with it.

The parties agree that the tenancy ended on December 1, 2022, when the tenants vacated the rental unit. The landlord testified that he has regained possession of the rental unit and that he does not require an Order of Possession. As the tenants no longer occupy the rental unit, I find that the tenancy ended on December 1, 2022, pursuant to section 44(1)(f) of the Act. Consequently, the tenant's application seeking to cancel the notice to end tenancy for unpaid rent is dismissed without leave to reapply. Likewise, the landlord's application seeking an Order of Possession for unpaid rent is dismissed without leave to reapply.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?  
Can the landlord recover the filing fee?

### Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The tenancy began on January 1, 2017, with rent set at \$2,650.00 per month due on the first day of each month, as shown on the tenancy agreement. However, some time in 2020, the landlord verbally agreed to a

reduction in rent down to \$2,537.50 when the tenant's marijuana operation was not doing well. The tenant has continued to pay the lesser amount.

The tenant did not pay rent for the months of July, August, September, October or November, a total of five months. During the hearing, the landlord made an oral application to recover an additional month's rent since the rental unit was not fit to be rented.

On September 15, 2022, the co-tenant VC paid \$3,750.00 of the arrears and agreed to pay a further \$3,750.00 in January, 2023.

The tenant gave the following testimony. The house was advertised for rent back in 2016 at \$2,000.00 for the main floor or \$2,500.00 for the whole house. A friend of the tenants moved in, but later moved out and the rent continued to be \$2,500.00. The tenant alleges there were multiple different tenancy agreements between themselves and the landlord and provided copies of them as evidence for this hearing. The tenant argues that there are proceedings in the Supreme Court involving a potential purchase of the house and provided a copy of a Notice of Civil Claim into evidence.

The tenant acknowledges he and the co-tenant did not pay rent from July 1, 2022 through to December 1, 2022 as the landlord owes him the equivalent of \$500.00 per month for overpaid rent. The tenant alleges there was no hot water in the rental unit and the tenant states he lacks the funds to sue the landlord.

After the tenant provided testimony, the landlord indicated he did not hear any of the tenant's testimony. The landlord stated he didn't want to interrupt the tenant's testimony to tell me he couldn't hear it. I advised the landlord that a summary of the tenant's testimony would be provided in the decision.

The landlord was able to provide rebuttal testimony, despite not hearing the tenant's testimony. Regarding the multiple tenancy agreements provided, the landlord argues that none of them are signed by him, making those tenancy agreements bogus. It makes no sense for him to have advertised the home at \$2,000.00 at the beginning of the tenancy as the tenant states, then agree to rent it out for \$2,650.00. The contract to purchase the house tendered as evidence by the tenant does not bear the landlord's signature, making it a falsified document as well.

### Analysis

The tenant argued that the rent was originally advertised at \$2,000.00 in 2016 but provided no proof of that. The tenant also argued that the landlord agreed to sell him the property but provided an unsigned document, "Lease w/option to Purchase" as evidence of this. Lastly, the tenant provided multiple versions of tenancy agreements that were either missing signatures, have scribble marks where signatures are required or markings not initialled by all signatories. On a balance of probabilities, I find none of the tenancy agreements proffered by the tenant are credible. Nor do I find the landlord and the tenant entered into a valid option to purchase the rental property, based on the evidence before me. The argument that the rental unit was advertised at \$2,000.00 per month is irrelevant as the parties signed a valid tenancy agreement stating rent is set at \$2,650.00 per month which the landlord verbally agreed to lower to \$2,537.50.

Section 26 of the *Act* is clear, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. There are five situations when a tenant may deduct money from the rent:

1. The tenant has an arbitrator's decision allowing the deduction
2. The landlord illegally increases the rent
3. The landlord has overcharged for a security or pet damage deposit
4. The landlord refuses the tenant's written request for reimbursement of emergency repairs
5. The tenant has the landlord's written permission allowing a rent reduction

In the case before me, none of the situations where a tenant had the right to deduct all, or a portion of the rent was present. While the tenant argued that the landlord "owes" him \$500.00 per month in rent reduction, the tenant did not provide sufficient evidence to establish how or why this was the case. There is no arbitrator's decision allowing the deduction and no written permission from the landlord allowing the rent reduction. As such, I find the tenant was obligated to pay rent in the amount of \$2537.50 for the five months between July 1, 2022, and November 30, 2022 [ $\$2,537.50 \times 5 = \$12,687.50$ ]. The landlord acknowledged the co-tenant repaid \$3,750.00 of the arrears on September 15, 2022, and I reduce the monetary order by that amount. [ $\$12,687.50 - \$3,750.00 = \$8,937.50$ ].

The tenancy ended on December 1, 2022, pursuant to section 44(1)(f). There is no requirement under the *Act* for the tenant to pay rent to the landlord beyond that date.

During the hearing, the landlord made an oral application seeking an additional month's rent as compensation because the condition of the unit upon taking possession was so bad that he couldn't rent it out for the month of December. I find that this is not an application for "rent" as contemplated under section 26 but for damages under sections 7 and 67 of the Act that must be applied for in a separate application. I decline to grant this additional compensation, and I dismiss this application to amend the landlord's original application with leave to reapply.

The landlord was successful in the application and the landlord may recover the \$100.00 filing fee.

### Conclusion

I award the landlord a monetary order in the amount of \$9,037.50. The tenant must be served with this Order and should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is legal, binding and final and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 11, 2023

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Residential Tenancy Branch